

December 4, 2018

Mr. Devin Leary
Human & Rohde, Inc.
512 Virginia Avenue
Towson, MD 21286

Re: Betsill Property – 20850 & 20915 Gunpowder Road
Forest Conservation Variance
Tracking #03-18-2856

Dear Mr. Leary:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on November 19, 2018. The request seeks a variance to impact one specimen tree in order to construct a single family dwelling on Lot 2 of an existing two-lot subdivision which layout is proposed to be refined. Lot 2 is a 15.2-acre, entirely wooded lot. Lot 1 is 8.9 acres and separated into two parts by Gunpowder Road. The specimen tree to be removed from Lot 2 is a 39-inch DBH chestnut oak in good condition. There are eight other specimen trees on Lot 2 that will not be impacted by construction and will be retained within a Forest Conservation Easement (FCE). All specimen trees on Lot 2 are within forest. There is one additional specimen tree on Lot 1 that is not in forest but is found within an existing Forest Buffer Easement (FBE).

The Director of the Department of Environmental Protection and Sustainability (EPS) may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of the property. The applicant is seeking to construct a single family dwelling on Lot 2. Lot 2 is 15.2 acres and most of its nine specimen trees are concentrated near the northeastern property line. As it would be possible to reconfigure the site design to avoid or reduce impacts to specimen trees, full application of the law

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would not deprive the applicant of all beneficial use of the property. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due to the location of the specimen tree relative to the buildable area rather than general conditions of the neighborhood. Therefore, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood consists of single-family residences, agricultural lands, and forested park lands. As such, the construction of one additional home on a 15.2-acre wooded lot will not alter the essential character of this neighborhood. Therefore, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The project will not impact any wetlands, streams, or associated buffer areas. A FBE protecting stream and wetland resources on Lot 1 was previously recorded in 2005. Furthermore, the property will be developed in accordance with current stormwater regulations. As a result, this Department finds that the proposed variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions resulting in conditions or circumstances requiring this special variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Although one specimen tree is to be removed in addition to the clearing of 2.5 acres of forest, the break-even point of forest retention will be exceeded by 0.3 acre. Moreover, the forest to be retained in the FCE contains eight additional specimen trees that will be protected, along with one additional specimen tree on Lot 1 that will not be impacted by construction. Therefore, this variance is consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code, and this criterion has been met.

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Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code contingent on the following conditions:

1. The following note must be on all subsequent plans for this development project:

“A variance was granted on December 4, 2018 by Baltimore County Department of Environmental Protection & Sustainability to allow impact to one specimen tree. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met including retaining forest in excess of the break-even point onsite in Forest Conservation Easements.”

2. This variance approval does not exempt future development activities or future removal of specimen trees at this site from compliance with Baltimore County’s Forest Conservation Law.
3. Mitigation for the removal of the specimen tree is not required, given that it is in forest to be mitigated and protected in accordance with Sections 33-6-111 and 33-6-112 of the Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens
Deputy Director

DVL/lbe

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- c. Mr. Scott Lindgren, Gerhold, Cross & Etzel, Ltd.
Ms. Marian Honeczy, Maryland Dept. of Natural Resources

I/we agree to the above conditions to bring my/our property into compliance with
Baltimore County's Forest Conservation Law.

Owner's Signature

Date

Printed Name